

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3041 OF 2005

Sajjanraj Hastimal Jain ...Petitioner
Vs.
Sundarlal Prasannakumar Jain & Ors. ...Respondents

Shri Abhinandan B. Vagyani for the Petitioner.
Shri U.V.Nikam, A.P.P. for the State.

**CORAM : A. S. OKA, J.
DATE : AUGUST 18, 2006.**

P.C.:

1. Heard the Advocate appearing for the
Petitioner. The Petitioner is an accused in a
complaint filed by the first and second Respondents
under section 138 of the Negotiable Instruments Act,
1881. The Petitioner applied to the learned
Magistrate for recall of order issuing process. The
said Application was rejected by the learned
Magistrate by order dated 09th February, 2004. A
Revision Application was filed by the Petitioner in
the Sessions Court for challenging the said order
dated 09th February, 2004. The Revision Application
has been rejected by the order which is impugned in
this Petition. The Revision Application is rejected
on the ground that in view of decision of the Apex
Court in the case of Adalat Prasad Vs. Rooplal
reported in 2004(3) Crimes Page 350, Application made

by the Petitioner for recall of order issuing process was not maintainable. In the said Revision Application at the time of final hearing, a submission was made on behalf of the Petitioner that in the same Revision Application Sessions Court should examine the legality and validity of order issuing process. The said request made by the Petitioner has been rejected on two grounds. Firstly, that Revision was not directed against the order issuing process and secondly the Revision Application for challenging order issuing process was barred by limitation.

2. As the challenge by the Petitioner in the Revision Application was confined to order passed on an Application made by the Petitioner for recalling order issuing process, no fault can be found with the view taken by the learned Additional Sessions Judge.

3. The learned Counsel appearing for the Petitioner submitted that the Application for recalling of process was made by the Petitioner on 16th August, 2003 i.e. much before the decision in the case of Adalat Prasad. He submitted that even the order dated 09th February, 2004 was passed before the

decision of the Apex Court in the case of Adalat Prasad and that is the reason why Revision Application was not filed for challenging the order issuing process. The factual statements made by the learned Counsel for the Petitioner cannot be disputed. However, all these facts will be relevant as and when the Petitioner files a Revision Application before the Sessions Court for challenging order issuing process and an Application for condonation of delay is made. Suffice it to say that notwithstanding the impugned order passed by the Sessions Court, it will be open for the Petitioner to challenge the order passed by the learned Magistrate by which he has issued process. The factual aspects which are shown by the learned counsel for the Petitioner will be certainly relevant as and when Application for condonation of delay is made. Subject to observations made above, the Petition is rejected.

JUDGE